

**BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA**

INQUIRY CONCERNING A
JUDGE: GREGORY P. HOLDER
NO.: 02-487

SUPREME COURT
CASE NO.: SC03-1171

**MOTION AND SUGGESTION TO DISQUALIFY JUDGE JOHN P.
KUDER, JUDGE THOMAS B. FREEMAN, DR. LEONARD HABER, AND
MR. RICARDO MORALES, III, OF THE JUDICIAL QUALIFICATIONS
COMMISSION HEARING PANEL AND SUPPORTING AFFIDAVIT**

Respondent, Judge Gregory P. Holder, files this Motion and Suggestion to Disqualify Judge John P. Kuder, Judge Thomas B. Freeman, Dr. Leonard Haber, and Mr. Ricardo Morales, III, of the Florida Judicial Qualifications Commission (“JQC”) Hearing Panel, and Respondent’s Supporting Affidavit, pursuant to Rule 25 of the Florida Judicial Qualifications Commission Rules (“JQCR”), Rule 2.160 of the Florida Rules of Judicial Administration, Canon 3E of the Code of Judicial Conduct (“Judicial Canon 3E”), and Respondent’s fundamental Florida and federal constitutional due process rights to a hearing before a fair and impartial panel. The grounds supporting this Motion and Suggestion are set forth below.

1. JQCR 25 provides for the disqualification of JQC Hearing Panel members whose impartiality may be questioned:

(a) Whenever a judge against whom formal proceedings have been instituted, shall file with the Hearing Panel an affidavit that the judge fears the judge will not receive a fair hearing before the Hearing Panel on the charges because of the prejudice of one or more members

of the Hearing Panel against the judge, and the facts stated as the basis for making the affidavit shall be supported in substance by affidavit of at least two reputable citizens of the State of Florida not kin to the judge or the judge's attorney, or if any member of the Hearing Panel shall voluntarily recuse himself, such member or members of the Hearing Panel shall proceed no further therein and shall be disqualified from hearing the charges.

Fla. Jud. Qual. Comm'n R. 25. A judge may also suggest the disqualification of a panelist whose impartiality is in question:

(d) A judge moved against by the Commission may, by affidavit, suggest the disqualification of a member or members of the Commission unsupported by two citizens, but in such event the determination of the matter of disqualification shall be by majority vote of the panel having jurisdiction unless the person sought to be disqualified voluntarily recuses himself.

Id.

2. Further, Rule 2.160(b) provides that “[a]ny party, including the state, may move to disqualify the trial judge assigned to the case on grounds provided by rule, by statute, or by the Code of Judicial Conduct.” Fla. R. Jud. Admin. 2.160. Judicial Canon 3E imposes a duty on a judge to disqualify himself in situations where the judge’s impartiality might be questioned:

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer or was the lower court judge in the matter in controversy, or a lawyer with whom the judge

previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it

Fla. Code Jud. Conduct, Canon 3E.

3. In its Notice of Formal Charges, the JQC Investigative Panel charged Respondent with plagiarism and making false statements. (Notice of Formal Charges.) According to the charging document, such actions, if true, would demonstrate Respondent's unfitness to hold the office of Judge. Id.

4. A Hearing Panel of six members is scheduled to adjudicate the charges pending against Respondent.¹ Four of these panelists, Judge John P. Kuder, Judge Thomas B. Freeman, Dr. Leonard Haber, and Mr. Ricardo Morales, III, (the "Previous Panelists") participated in a previous JQC investigation of Respondent.

5. Specifically, the Previous Panelists served as members of a JQC panel that investigated allegations that Respondent had provided a false or misleading answer on his application for a federal judgeship. (Notice of Formal Charges, Inquiry Concerning a Judge No. 01-303.) That Investigative Panel of six members determined, by affirmative vote of not less than five members, that probable cause existed to file formal charges against Respondent.² Id. As a result of their

¹ The panel consists of Judge John P. Kuder, Judge Thomas Freeman, Howard C. Coker, Esq., Perry Odom, Esq., Dr. Leonard Haber, and Mr. Ricardo Morales, III.

² The investigative panel also concluded that it could not determine with certainty that Respondent had provided a response that was intentionally false or misleading. (Findings and Recommendations of the Florida Judicial Qualifications Commission, Inquiry Concerning a Judge No. 01-303.) Therefore, the panel recommended to the Florida Supreme Court that the matter be disposed of by entry of stipulations between

participation in the prior investigation, the Previous Panelists necessarily formed opinions about, among other things, Respondent's credibility and veracity.

6. The Third Order Scheduling Hearing and Prehearing Conference in the instant case contained a list of panel members. (Third Order Scheduling Hearing and Prehearing Conference.) Subsequent to Respondent's receipt of this order, Respondent reviewed documents from the prior investigation and realized that four of the members of that previous Investigative Panel are members of the Hearing Panel in this proceeding. Thereafter, Respondent conferred with the Honorable Jerry Hill³ and, as a result of that conversation, realized that the four panelists who participated in the previous JQC investigation were witnesses to Respondent's credibility and veracity and had necessarily formed opinions as to Respondent's credibility and veracity.

7. Respondent has filed contemporaneously with this Motion and Suggestion to Disqualify the Affidavits of Patricia Fields Anderson and the Honorable Jerry Hill, which support this Motion and Suggestion. Both Ms. Anderson and Mr. Hill are reputable citizens of the State of Florida and are not kin to Respondent or his attorneys.

Respondent and the JQC.

³ The Honorable Jerry Hill is the State Attorney for the Tenth Judicial Circuit of Florida. He is knowledgeable on conflict of interest matters as a result of, among other things, his experience as State Attorney and as Chairman of the Florida Bar Grievance Committee for the Tenth Judicial Circuit.

8. Consequently, Respondent fears that he will not receive a fair hearing because of the prejudice of the Previous Panelists against Respondent. Thus, the Previous Panelists must be disqualified. Fla. Jud. Qual. Comm'n R. 25(a). Alternatively, Respondent suggests the Previous Panelists should be disqualified. Fla. Jud. Qual. Comm'n R. 25(d).

9. Additionally, Judicial Canon 3E requires that a judge disqualify himself from any "proceeding in which the judge's impartiality might reasonably be questioned." Fla. Code Jud. Conduct, Canon 3E. The canon expressly requires disqualification of a judge who has been a material witness concerning a proceeding. Id. Because the Previous Panelists have been material witnesses to Respondent's credibility and veracity, because their impartiality might reasonably be questioned, and because they have personal bias or prejudice against Respondent, Judicial Canon 3E requires their disqualification.

10. Further, the Hearing Panel as presently constituted cannot provide a fair and impartial hearing. Indeed, a majority of its members necessarily have already formed opinions regarding Respondent's credibility and veracity. A hearing before a panel that includes any of the Previous Panelists would violate Respondent's federal and Florida procedural and substantive due process rights.

11. For each of these reasons, Respondent moves for and suggests that this honorable Hearing Panel disqualify Judge John P. Kuder, Judge Thomas B.

Freeman, Dr. Leonard Haber, and Mr. Ricardo Morales, III. Alternatively, Respondent requests that Judge John P. Kuder, Judge Thomas B. Freeman, Dr. Leonard Haber, and Mr. Ricardo Morales, III, disqualify themselves from participation in this proceeding.

12. If this honorable Hearing Panel is not inclined to grant this Motion or accept this Suggestion in full, Respondent respectfully requests the opportunity for oral argument.

GREGORY P. HOLDER
Circuit Judge, Thirteenth Judicial Circuit
Respondent

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared, Gregory P. Holder, who, after first being duly sworn, deposes and states:

1. My name is Gregory P. Holder, I am the Respondent in this proceeding, and I make this Affidavit based on personal knowledge.

2. I fear that I will not receive a fair hearing in this proceeding because of the prejudice of the Previous Panelists against the Respondent as set forth in more detail in the preceding Motion and Suggestion. I adopt by this reference the grounds supporting the Motion and Suggestion and those set forth in the supporting Affidavits of Ms. Anderson and Mr. Hill.

Gregory P. Holder

SWORN TO AND SUBSCRIBED this ____ day of August 2004, by Gregory
P. Holder, who is personally known to me.

My Commission Expires: _____

[Affix Notarial Seal]

Printed Name _____
Notary Public of Florida

CERTIFICATE OF SERVICE

I certify that on August ____, 2004, Respondent's Motion and Suggestion to Disqualify Judge John P. Kuder, Judge Thomas B. Freeman, Dr. Leonard Haber, and Mr. Ricardo Morales, III, of the Florida Judicial Qualifications Commission Hearing Panel was served via facsimile and United States Mail on JQC Special Counsel Charles Pillans, III, Esq., Bedell Ditmar Devault Pillans & Coxe, P.A., The Bedell Building, 101 East Adams Street, Jacksonville, Florida, 32202; and to JQC General Counsel Thomas MacDonald, Jr., Esq., 1904 Holly Lane, Tampa, Florida, 33629. The original Motion and Suggestion, together with a diskette containing the document in Word Perfect format, 14-point Times New Roman font, has been sent for filing to Thomas D. Hall, Clerk of the Court, Florida

Supreme Court, 500 South Duval Street, Tallahassee, Florida, 32399-1927. A copy of the foregoing has also been furnished via U.S. Mail to Ms. Brooke Kennerly, Hearing Panel Executive Director, 1110 Thomasville Road, Tallahassee, FL 32303; and by telecopier and U.S. Mail to: Honorable John P. Kuder, Chairman of the Hearing Panel, Judicial Building, 190 Governmental Center, Pensacola, FL 32501; and John Beranek, Counsel to the Hearing Panel, Ausley & McMullen, P.O. Box 391, Tallahassee, Florida 32302.

Attorney